

REMARKS

This Amendment and Reply is intended to be completely responsive to the Non-Final Office Action mailed March 1, 2010. Applicant respectfully requests reconsideration of the present Application in view of the foregoing amendments and in view of the reasons that follow. Claims 1 and 4-9 have been canceled without prejudice to further prosecution on the merits. Claims 2, 3, 10, 12, 13, 15, 16, 20-22, 24, 25 and 81-83 have been amended. New Claims 89-95 have been added to provide claims of varying scope. No new matter has been added. Accordingly, Claims 2, 3 10-27 and 81-95 will be pending in the present Application upon entry of this Amendment and Reply.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claim Objections

On page 2 of the Detailed Action, the Examiner objected to Claim 3 for failing to further limit the subject matter of a previous claim. Specifically, the Examiner alleged that in Claim 3, the language “the first power source and the second power source is the same” negates the positive establishment of a “second power source” in Claim 1, and thus does not further limit the subject matter of previously established “second power source.”

At the outset, Applicant notes that Claim 1 has been canceled without prejudice to further prosecution on the merits, and that Claim 12 has been rewritten into independent form including all of the limitations of Claim 1 (in addition to the intervening claims). Applicant submits that Claim 1, as originally filed, was intended to cover both a concrete mixing truck in which the second drivetrain is powered by the same power source that powers the first drivetrain and a concrete mixing truck in which the second drivetrain is powered by a source other than the power source that powers the first drivetrain. Applicant’s use of the term “second” in reference to the power source that is coupled to the second drivetrain was not intended to be synonymous

with the term “different.” This is further evidenced by dependent Claim 3, which recites that the first power source and the second power source are the same power source. Nonetheless, in view of this objection, Applicant has left out reference to “a second power source” in Claim 12 as rewritten into independent form in an effort to clarify that the claim is broad enough to cover both a concrete mixing truck in which the second drivetrain is powered by the same power source that powers the first drivetrain and a concrete mixing truck in which the second drivetrain is powered by a source other than the power source that powers the first drivetrain.

Accordingly, Applicant respectfully requests withdrawal of the objection to Claim 1.

Claim Rejections – 35 U.S.C. § 112

On pages 2-3 of the Detailed Action, the Examiner rejected Claims 1-27 and 81-88 under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner alleged that Claim 1 introduces two discrete elements of a “first power source” and a “second power source, and that in view of dependent Claim 3, the scope of Claim 1 cannot be determined as to the number of power source(s) being provided in the claim.

As noted above, independent Claim 1 has been canceled without prejudice to further prosecution on the merits, and Claim 12 has been rewritten into independent form including all of the limitations of Claim 1 (in addition to the intervening claims). As also noted above, independent Claim 12 has been rewritten in such a way that Applicant believes should remove the indefiniteness alleged by the Examiner.

Accordingly, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 112, ¶ 2.

Allowable Subject Matter

On page 8 of the Detailed Action, the Examiner indicated that Claim 12 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

Applicant thanks the Examiner for this notice of allowable subject matter. In response, Applicant has chosen to rewrite Claim 12 into independent form including all of the limitations of the base claim and the intervening claims (i.e., Claims 4-9). As noted above, Applicant has removed reference to “a second power source” from the claim, but does not believe that this changes the scope of original Claim 1. Applicant has also canceled Claims 1 and 4-9 without prejudice to further prosecution on the merits. Despite rewriting Claim 12 in independent form, and canceling Claims 1 and 4-9, Applicant wishes to make it unmistakably clear that it does not agree to or acquiesce in the rejections under 35 U.S.C. § 103 detailed below. Claim 12 has been rewritten in independent form, and Claims 1 and 4-9 have been canceled, only to obtain prompt allowance of claims reciting subject matter indicated as allowable by the Examiner.

Claim Rejections – 35 U.S.C. § 103

On pages 3-7 of the Detailed Action, the Examiner rejected Claims 1-11, 13-23 and 81-88 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,585,356 to Hudelmaier (“Hudelmaier”) in view of International Publication No. WO 01/26871 to Khouri (“Khouri”). On page 7 of the Detailed Action, the Examiner rejected Claim 24 under 35 U.S.C. § 103(a) as being unpatentable over Hudelmaier in view of Khouri and in further view of U.S. Patent No. 4,124,304 to Suganuma (“Suganuma”). On page 8 of the Detailed Action, the Examiner rejected Claims 25-27 under 35 U.S.C. § 103(a) as being unpatentable over Hudelmaier in view of Khouri and in further view of U.S. Patent No. 2,303,902 to Ball (“Ball”).

Applicant believes that these rejections are now moot. Claims 1 and 4-9 have been canceled without prejudice to further prosecution on the merits and the remaining claims now depend from a claim reciting subject matter that the Examiner has previously indicated is

allowable. Accordingly, Applicant respectfully requests withdrawal of these rejections and allowance of Claims 2, 3, 10, 11, 13-23 and 81-88.

New Claims

Applicant has added new Claims 89-95 to provide claims of varying scope. Applicant believes that new Claims 89-95 are patentable over the prior art of record. For example, independent Claim 89 recites a “concrete mixing truck” comprising, among other elements, a “mixing drum comprising . . . at least one formation coupled to [a] wall [of the mixing drum] and extending from [an] inner surface of the wall, the formation including a body, a support member and at least one helical spring that at least partially extends around a periphery of the support member, the support member and the at least one helical spring being embedded within the end region.” Hudelmaier, alone or in any proper combination with Khouri, Suganuma and/or Ball, fails to disclose, teach or suggest such a concrete mixing truck. Accordingly, Applicant respectfully requests allowance of independent Claim 89 because at least one element of such claim is not disclosed, taught or suggested by Hudelmaier, alone or in any proper combination with Khouri, Suganuma and/or Ball. Applicant submits that new Claims 90-95, as they depend from Claim 89, are allowable therewith at least because of their dependency, without regard to the further patentable subject matter set forth in such claims.

* * *

Applicant respectfully submits that each and every pending rejection has been overcome, and that the present Application is in a condition for allowance. In particular, even when the elements of Applicant’s claims, as discussed above, are given a broad construction and interpreted to cover equivalents, the cited references do not teach, disclose, or suggest the claimed subject matter. Favorable reconsideration of the Application is respectfully requested.

Further, Applicant respectfully puts the Patent Office and all others on notice that all arguments, representations, and/or amendments contained herein are only applicable to the present Application and should not be considered when evaluating any other patent or patent

application including any patents or patent applications which claim priority to this patent application and/or any patents or patent applications to which priority is claimed by this patent application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, the Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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